

## KANSAS JUVENILE JUSTICE CODE

### SECTION 8

#### Chapter 38.--MINORS

##### Article 1. – GENERAL PROVISIONS

**38-120. Recovery from parents for malicious or willful acts by certain children; limitations.** Any person receiving bodily injury or any person, partnership, corporation, political subdivision or other entity whose property has been damaged or destroyed shall be entitled to recover damages in an appropriate action at law in a court of competent jurisdiction from the parents of any child, living with the parents, who maliciously or willfully injured such person or damaged or destroyed such property while under the age of 18 years. Such recovery shall be limited to the actual damages in an amount not to exceed \$5,000, in addition to taxable court costs, unless the court or jury finds that the malicious or willful act of such minor causing such injury, damage or destruction is the result of parental neglect, in which event the \$5,000 limitation does not apply. Recovery under this section for bodily injury shall be limited to actual medical expenses.

**History:** L. 1959, ch. 203, § 1; L. 1965, ch. 275, § 1; L. 1978, ch. 156, § 1; L. 1995, ch. 257, § 5; July 1.

##### **Research and Practice Aids:**

Parent and Child 13(1)

C.J.S. Parent and Child §§ 66-68.

##### **Law Review and Bar Journal References:**

1963-65 survey of family law, John W. Brand, Jr., and Dan Hopson, Jr., 14 K.L.R. 271, 290 (1965).

“Survey of Kansas Law: Family Law,” Camilla Klein Haviland, 27 K.L.R. 241, 252 (1979).

“Parents’ Liability for a Child’s Wrongful Acts,” Randall K. Rathbun, 4 J.K.T.L.A. No. 3, 7 (1980).

“Immigration Law and Policy: A History of Judicial Deference and the Effect of the Immigration Reform and control Act of 1986,” Susan Gentry Saidian and Susana Valdovinos-Hall, 27 W.L.J. 601, 614 (1988).

##### **CASE ANNOTATIONS**

1. Statute requires both the act and its harmful result to be intended before parental liability imposed. *Hanks v. Booth*, 11 K.A.2d 149, 151, 716 P.2d 596 (1986).

2. to sustain action, one must prove both act of offending children and resulting damage were willful or malicious. *Hanks v. Booth*, 240 K. 30, 33, 726 P.2d 1319 (1986).

3. Ambiguity in policy’s severability clause; policy not construed to deny coverage for liability for negligent supervision of minor child. *Catholic Diocese of Dodge City v. Raymer*, 16 K.A. 2d 488, 489, 825 P.2d 1144 (1992).

4. Insurer’s responsibility to insured homeowners for damages caused by insured’s minor child’s intentional acts of vandalism examined. *Catholic Diocese of Dodge City v. Raymer*, 251 K. 689, 690, 840 P.2d 456 (1992).

### CHAPTER 40—INSURANCE ARTICLE 2—GENERAL PROVISIONS

**40,2,161. Coverage for children in the custody of the commissioner of juvenile justice.** On and after July 1, 1997:

(a) All individual and group health insurance policies providing coverage on an expense incurred basis, individual and group service or indemnity type contracts issued by a profit or nonprofit corporation and all contracts issued by health maintenance organizations organized or authorized to transact business in this state which provides coverage for a family member of the enrollee, insured or subscriber shall, as to such family members’ coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a child in the custody of the commissioner of juvenile justice.

(b) The contract issued by a health maintenance organization may provide that the benefits required pursuant to this subsection shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

**History:** L. 1996, ch. 229, § 15; July 1.

### Chapter 60. – PROCEDURE, CIVIL Article 33. – ACTIONS RELATING TO COMMERCIAL ACTIVITY

**60-3331. Civil penalty against shoplifter; parental liability for minor; amount; attorney fees and costs; demand for reimbursement; other remedies not precluded.** (a) Except as otherwise provided, a merchant may file a civil action to recover a civil penalty against any person who shoplifts from that merchant. If the merchant does not recover the merchandise in merchantable condition, the merchant shall be entitled to a civil penalty for an amount equal to twice the retail cost of the merchandise, or \$50, whichever is greater, but in no case shall such civil penalty be more than \$500. If the merchant recovers the merchandise in merchantable condition, the merchant shall be entitled to a civil penalty of \$50 or 50% of the retail cost of the merchandise, whichever is greater, but in no case shall such civil penalty be more than \$350.

(b) Except as provided further, if the person who shoplifts is an unemancipated minor, the parent of such minor, shall be civilly liable pursuant to a civil

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action filed as authorized in subsection (a) in an amount of the civil penalty as prescribed in subsection (a). If the merchant recovers the merchandise in merchantable condition, the civil penalty against the parent, as provided in this subsection, shall be \$50.

(c) Unless the action is brought pursuant to the Kansas small claims act and a final judgment is rendered in small claims court, the prevailing party in such action brought pursuant to this section shall be entitled to reasonable attorney fees and costs. If the action is brought in small claims court and the judgment is appealed to district court pursuant to chapter 60 of the Kansas Statutes Annotated or K.S.A. 61-2709 and amendments thereto, the prevailing party on appeal shall be entitled to reasonable attorney fees and costs.

(d) A conviction or a plea of guilty to the offense of theft which would constitute shoplifting or an adjudication as a juvenile offender or an adjudication as a child in need of care for committing an offense while a juvenile which if committed by an adult would constitute the commission of the offense of theft which would constitute shoplifting is not a prerequisite to the filing of a civil action under this section.

(e) Prior to filing a civil action under this section, a merchant damaged by shoplifting shall demand that an individual alleged to be civilly liable under this act reimburse such merchant in an amount of the civil penalty as prescribed in subsection (a). Such demand shall be in writing and offered in consideration for the merchant's agreement not to commence a civil action under this section. Such demand shall not contain a threat of criminal prosecution against such individual. Any merchant who makes a demand with a threat of criminal prosecution against such individual shall be precluded from filing a civil action under this section and pursuing any other remedy at law or equity. A demand pursuant to this subsection shall be a prerequisite to filing a civil action under this section, but no demand may be made which does not comply with this subsection.

(f) Nothing contained in this act shall be construed to preclude a merchant from pursuing any other remedy at law or equity prior to filing an action under this act.

(g) For purposes of this act, "shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with

the intent of appropriating merchandise to that person's or another's own use without payment, obtaining merchandise at less than its stated sales price or otherwise depriving a merchant of all or any part of the value or use of merchandise:

(1) Removing any merchandise from the premises of the merchant's establishment;

(2) concealing any merchandise with intent to leave the premises with the merchandise;

(3) substituting, altering, removing or disfiguring any label or price tag;

(4) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; or

(5) disarming any alarm tag attached to any merchandise.

(h) A civil penalty, claim or judgment under the provisions of this section shall not constitute an obligation or liability against any insurer or third-party payor.

**History:** L. 1993, ch. 98, § 1; L. 2002, ch. 156, § 1; July 1.

### **Law Review and Bar Journal References:**

"Unauthorized Corporate Law Practices in Small Claims Court: Should Anybody Care?" Ron Smith, 33 W.L.J. 345, 360 (1994).

"2002 Legislative Wrap-Up," Paul T. Davis, 71 J.K.B.A. No. 7, 15 (2002).

### **Attorney General's Opinions:**

Civil penalty against shoplifters does not preclude a criminal prosecution. 94-33.

## **CHAPTER 75 – STATE DEPARTMENTS, PUBLIC OFFICERS AND EMPLOYEES ARTICLE 52 – DEPARTMENT OF CORRECTIONS**

**75-52,147. Death of inmate in custody of secretary of corrections or juvenile in custody of commissioner of juvenile justice; investigation by Kansas bureau of investigation.** On and after July 1, 2004, whenever death occurs of an inmate, who is in the custody of the secretary of corrections and who resides in a correctional facility or boot camp operated by or contracted through the secretary or of a juvenile, who is in the custody of the commissioner of juvenile justice and who resides in an institution operated by or contracted through the commissioner, an investigation regarding the circumstances of the death shall be initiated by the Kansas bureau of investigation. A report of the findings of the investigation shall be made available to the chairperson of the senate judiciary committee

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and the house corrections and juvenile justice committee of the Kansas legislature and shall be subject to the open records act, K.S.A. 45-215, and amendments thereto. No such investigation by the Kansas bureau of investigation shall be required if the cause of death is determined to be natural, by a qualified autopsy, preliminary autopsy report or death certificate or the inmate or juvenile was regularly attended by a licensed physician.

**History:** L. 2004, ch. 160, § 4; L. 2005 ch. 150 § 2; July 1.